

California Surveyors Forums

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Who owns the land under the roads in a California Subdivision....

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by [steffan](#) » Fri Jan 18, 2008 3:09 pm

Take a look at AG 04-809. It might help you. You can find a copy of it under the articles section of the CLSA website.



[steffan](#)

Posts: 125
Joined: Wed Oct 10, 2007 2:44 pm
Location: N CA

by [Ian Wilson](#) » Fri Jan 18, 2008 4:53 pm

Bingo! Steffan!

In short, unless there are specific words on the map conveying full fee title to the local agency, no fee interest is transferred. AG Op 04-809 is the reference.

And you've been told by the local agencies that the bold lines marking the limits of your subdivision map only go to the right-of-way line, right?

Aux contraire! Not so. In order to map the FULL fee ownership of the subdivider, the lines MUST run to the centerlines of the streets...even on the really old maps. So sayeth The Honorable Bill Lockyer in response to a question from Stephen Shane Stark, Esq., County Counsel, County Of Santa Barbara.

Ian...

Enjoy the weekend.

Ian Wilson, P.L.S. (CA / NV / CO)
916.517.2879 cell

ian.wilson.pls@gmail.com



[Ian Wilson](#)

Posts: 757
Joined: Sat Aug 03, 2002 6:58 am
Location: Citrus Heights, CA

by [PLS7393](#) » Fri Jan 18, 2008 6:35 pm

You are correct Ian pertaining the location of the exterior boundary lines for a subdivision where the road is only an easement.

But how many deeds are incorrectly described by a Lot and Block description from the old maps, where roads were not dedicated, thus only a roadway easement per AG Op 04-809? Does that create a discrepancy with the fee title?



[PLS7393](#)

Posts: 496
Joined: Tue Aug 24, 2004 2:09 pm
Location: Bay Area (Fremont)
Contact:

Keith Nofield Professional Land Surveying

510-468-2703

by [Ian Wilson](#) » Sat Jan 19, 2008 8:55 am

[quote]But how many deeds are incorrectly described by a Lot and Block description from the old maps, where roads were not dedicated, thus only a roadway easement per AG Op 04-809? [quote]

None. Based on Mr. Lockyer's fine opinion, the Lot and Block description extend to the centerline of the street.

It must be assumed that the original owner of the subdivision did not intend to keep fee ownership of the strips of land running through the subdivision unless they intended to create toll roads throughout the subdivision. Since there aren't many cases of internal toll roads in California, we can disregard this extreme case. Additionally, the AG Lockyer determined that the fee ownership of the roadbeds does NOT pass to the local jurisdiction except in certain specific and explicit cases. Therefore - the fee ownership must remain with the owner of the land abutting the street.

By standard conventional methods, the ownership lines would run along the extensions of the sidelines to the centerline of the street or radially on curves.

[quote]Does that create a discrepancy with the fee title? [quote]

No. From the above described reasons. Who would you have as the titled owner of the roadbed? The original owner? The local jurisdiction? The abutting land owner?

For the Original owner to retain fee interest in the roadbed simply doesn't make sense. Can you imagine the heirs and assigns of the original owners learning that they had some fractional interest in the roadbed under one of the old subdivisions in Sacramento or Los Angeles or San Francisco? How on earth would/could they/we deal with that?

AG Lockyer has already determined that the local agency does NOT have title to the roadbed.

Who is left? The abutting land owner.

[quote]So when doing a parcel map and you need to show the blue border to the centerline of the street, do you extend the sidelines of the lot to the centerline of the street or do you go perpendicular to the centerline? [quote]

§66434(e) of the Subdivision Map Act states "the exterior boundary of the land included within the subdivision shall be indicated by distinctive symbols and clearly so designated. The map shall show the definite location of the subdivision, and particularly its relation to surrounding surveys"

Since we now understand that the exterior boundary of the subdivision extends to the centerline of the streets, the distinctive border must include the centerline. Anything else is actually a violation of the Subdivision Map Act.

Does anyone remember what the maximum punishment is for a violation of the Subdivision Map Act? The owner or subdivider can get up to one year in state prison and up to \$10,000 in fines for a violation of any part of the division (§66499.31). Every other violation is a misdemeanor.

It makes you stop and think about all those maps you've got recorded for subdivisions in local jurisdictions that insisted your "distinctive border" stop at the sideline of the street, doesn't it? And, to you guys in the local jurisdictions who have insisted that the distinctive border extend only to the sideline, can you say "aiding and abetting a misdemeanor"?

As far as where to put the line, I think it's logical to look to the original map for that. Usually, the map shows the sidelines as being perpendicular to the street centerlines. In such cases, I would hold the perpendiculars. In the cases where the sidelines are not perpendicular to the centerline, I would hold the bearing or the sideline. In most cases, this could be treated in the same fashion as the established principles for the division of a road that IS owned in fee by the local jurisdiction and subsequently vacated and conveyed to the abutting owners.

**Ian Wilson**

Posts: 757

Joined: Sat Aug 03, 2002 6:58 am

Location: Citrus Heights, CA

One of the interesting sidelines of this discussion is the concept of dedications. The original subdivision map can be said to dedicate the right-of-way shown on that map. Requiring each new subdivision map to reaffirm that dedication, even when no additional dedication is being conditioned, is a good thing. First, it reaffirms the dedication and removes all possibility pf the voidance of the original dedication by action of the subdivider and ministerial acts of the local jurisdictional agency. Second, it places clear, current notice that the dedication exists and it resolves any potential questions regarding nature of the fee interest of the right-of-way.

All of this goes to prove that it is incumbent upon the PROFESSIONAL land surveyor to maintain their education, continually search out new legal opinions and court cases and participate in professional forums such as this one. In my opinion, this thread is proof enough that Professional Development for land surveyor is need in California.

To the administrator: Can we have the vB codes turned on for this forum, please? The addition of codes can make these posts much more understandable. The <quote>, <\/quote> Function would have made the quotes in this post much more distinctiveâ€¦much like the border on a subdivision map!

Ian

Ian Wilson, P.L.S. (CA / NV / CO)
916.517.2879 cell

ian.wilson.pls@gmail.com

by Ian Wilson » Sat Jan 19, 2008 11:50 am



That tsection applies now, Aaron. However, I believe that this was enacted sometime during the late '80's or early '90's.

There are a number of old maps from the '10's, '20's and '30's that show the Lots and Bolcks as being distinct from the street. There is often very little language on the face of the map as to the interest in the streets. It was really a question concerning the status of these streets that was being put to the Aottmney General. However, AG 04-809 extends to all roadways, regardless of map date.

Cheers!

Ian

Ian Wilson, P.L.S. (CA / NV / CO)
916.517.2879 cell

ian.wilson.pls@gmail.com



Ian Wilson

Posts: 757
Joined: Sat Aug 03, 2002 6:58 am
Location: Citrus Heights, CA

by PLS7393 » Sun Jan 20, 2008 1:07 pm



So now, for those who participate on this great forum, we will have to educate the private developer or public officials why maps show the exterior boundary to the centerline, where the roadway is not accepted in fee.

Great topic Joe! This sure would be a grand talk at the upcoming conference in Reno!

Keith Nofield Professional Land Surveying

510-468-2703



PLS7393

Posts: 496
Joined: Tue Aug 24, 2004 2:09 pm
Location: Bay Area (Fremont)
Contact:

by Ian Wilson » Sun Jan 20, 2008 3:02 pm



Mauro:

You're pressing to hard. Road title remains with the dedicator. Only the right-of-way is dedicated to the public.

"...an easement of fee title..." means just that...and easement. An easement is simply the right to use the property of another. If you read "right to use" when you come across easement, you may get a better understanding.

The only exceptions to this are when the local jurisdiction purchases or accepts fee interest. Note that for most



Ian Wilson

Posts: 757
Joined: Sat Aug 03, 2002 6:58 am
Location: Citrus Heights, CA

state roads, the fee title resides in the state. This is preferable for a number of reasons.

Time for a nap. Two great dives into La Jolla Canyon today: one to 110feet and the second to 95 feet. Two more nudibranchs (sea slugs) to add to my life list, too!

Ian

Ian Wilson, P.L.S. (CA / NV / CO)
916.517.2879 cell

ian.wilson.pls@gmail.com

Show lots to the centerline?

by Gary O » Wed Jan 23, 2008 9:19 am

I disagree. Where the right of way has been or is being dedicated to the public, the lots shown on a map should end at the right of way line, not the centerline. For one thing, as Greg mentioned, fee doesn't always go to the center line. Also, the underlying fee owner has no control over this land, it is fully encumbered and he is not taxed on this land.

In the case of a private access easement over a parcel, then the parcel line should go to wherever it is in the easement.

Unless clearly stated on the map as being dedicated in fee, our office looks at old map dedications as easements.

I can't remember where I read this but it said something like "Where the dedication of right of way is ambiguous as to whether it is an easement or fee, one should take the lesser interest of an easement."

Gary O'Connor, L.S. 7272
County Surveyor, Sonoma

by Ian Wilson » Wed Jan 23, 2008 2:05 pm

I understand your point, Gary, but answer this:

If the road is vacated, to whom does the title go?

A dedication is merely a broader form of easement.

If you condition a Parcel Map upon relinquishing the access rights to the road in front of the parcel, what does the condition say? "...the owners shall have no right of access to Road X, EXCEPT THE GENERAL RIGHT TO USE THE EASEMENT..."

By extending the ownership to the centerline, the local agency can once again require dedication of the portion of the project sitting in the roadway. Thus, the public's right is perpetuated and reinforced.

Ian Wilson, P.L.S. (CA / NV / CO)
916.517.2879 cell

ian.wilson.pls@gmail.com

Ian,

by Gary O » Wed Jan 23, 2008 3:31 pm

"If the road is vacated, to whom does the title go?"

All we do is vacate the public's right to use the right of way. The title company figures out who owns what. If we did, in most cases the line would go down the center of the right of way.

"If you condition a Parcel Map upon relinquishing the access rights to the road in front of the parcel, what does the condition say? "...the owners shall have no right of access to Road X, EXCEPT THE GENERAL RIGHT TO USE THE EASEMENT..."

I'm not understanding what you're asking here. Again, all we're vacating is the rights of the public. Private rights,



Gary O

Posts: 97
Joined: Mon Mar 31, 2003 4:28 pm
Location: Sonoma County, God's country



Ian Wilson

Posts: 757
Joined: Sat Aug 03, 2002 6:58 am
Location: Citrus Heights, CA



Gary O

Posts: 97
Joined: Mon Mar 31, 2003 4:28 pm
Location: Sonoma County, God's country

created by the map, a deed or long term use, may still exist.

"By extending the ownership to the centerline, the local agency can once again require dedication of the portion of the project sitting in the roadway. Thus, the public's right is perpetuated and reinforced."

But, we're vacating the right of way....why would we want to get it rededicated later? If we or any other agency has an objection to the vacation, we turn it down.

I'm sure there's something I'm missing here.....

Gary O'Connor, L.S. 7272

County Surveyor, Sonoma

Title to fee under roads:

by [mbstanton](#) » Mon Feb 04, 2008 9:04 pm

Well, here's my \$0.02 worth. California Civil Code Section 831 states that road are generally easments with fee title extending to the center of road unless specifically stated otherwise. So even though you prepare a metes and bounds description to the right-of-way line, fee title is still conveyed.

Michael Stanton, PLS 5702



mbstanton

Posts: 32
Joined: Sun Sep 08, 2002 9:44 am

A Street is not a Lot for "of" descriptions (13.2 Brown's BC&LP, Pg. 394 of 5th Ed.)

by [Scott](#) » Tue Feb 05, 2008 10:07 am

Off topic but something to remember with this discussion, according to Brown's, in the case of an "of" description (i.e. "west 50' of a lot" or "west 1/2 of a lot"), a street abutting the lot is not used for the calculation of the position of the line no matter if it is a fee or easement (in California for sure).

Also, 8.8 Brown's BC&LP Pg. 202 of 5th Ed. "Centerline Presumption" is some good reading. This section seems to agree with the AGO, imagine that.

Good old Brown (and Robillard and Wilson), the California surveying bible!

FWIW

PS Anne Hoppe are you any relation to late great Art Hoppe of the SF Chronicle?

Scott DeLaMare
LS 8078



Scott

Posts: 97
Joined: Mon Oct 11, 2004 11:52 am
Location: Modesto, CA

by [Ian Wilson](#) » Tue Feb 05, 2008 4:21 pm

Scott:

Keep in mind that, as Curt would have said, the contrary may be shown!

I would have to look at how the road was established and when, relative to the "of" description.

For example, if the lot was split BEFORE the road was dedicated, all bets are off. The split goes from the old lot boundary, not the altered one based on a later dedication.

I would also have to look at how the land owners have handled it through the years. If they built fences, etc. to the line that included the street dedication, guess where the line goes.

Just as in the practice of law, NOTHING is absolute about boundary surveying. Neither one is a mathematical pursuit!

Anne:

Beautifully written piece!

And who says we don't practice law? That piece would warm the cockles of any real estate attorney's heart (if they



Ian Wilson

Posts: 757
Joined: Sat Aug 03, 2002 6:58 am
Location: Citrus Heights, CA

had one, that is)!

Ian

Ian Wilson, P.L.S. (CA / NV / CO)
916.517.2879 cell

ian.wilson.pls@gmail.com

by Ian Wilson » Wed Feb 06, 2008 1:00 pm

Cassey:

Has anyone got a chance to read the article in The American Surveyor titled "Roads that come up short under the law" by Lloyd Pilchen, LS, Esq.

Not yet. I'll be flying most of tomorrow. It's on my schedule of reading.

I am not sure how Illinois law relates to California Law, but the statement of "...Because there is no evidence of "clear, unequivocal, and unambiguous" donative intent, we find there was no common-law dedication.." worries me.

Illinois law has little effect on California statutes, particularly when the issues have already been elucidated sartorially and through an AG Opinion.

Â§111.0106 of the City of San Diego Municipal Code merely states, in (a) The City may establish and adopt submittal requirements, review procedures, and standards and guidelines for development to supplement to the Land Development Code. These support documents shall be known collectively as the Land Development Manual.

Could you help me understand where the City is requiring your to make a determination of the reversionary rights when those rights have not been specifically made?

Ian Wilson, P.L.S. (CA / NV / CO)
916.517.2879 cell

ian.wilson.pls@gmail.com



Ian Wilson

Posts: 757
Joined: Sat Aug 03, 2002 6:58 am
Location: Citrus Heights, CA

by Ian Wilson » Wed Feb 06, 2008 1:11 pm

Gary O:

I was making two separate points in my post.

First, when a street is vacated, you as a City do not determine who gets the fee title rights to the land under the vacated street. Why? Because you didn't own the rights in the first place.

Â§66434(e) of the Subdivision Map Act deals with the exterior boundary. It does not say anything about the unencumbered exterior. Whether the fee owner is assessed taxes, the public uses the road or not, the fee owner is the fee owner and the ownership extends to the bounds of the fee, not the unencumbered fee.

The second point that I was making had nothing to do with vacations. What I was saying is that, on subsequent subdivision maps, by requiring a RE-dedication of the portions of the fee interest which were already dedicated on previous maps, the new subdivider and potential owners of the newly subdivided lands are on notice that the street has been re-dedicated. In other words, there is no question as to the public's right to use the dedicated street.

Cheers...



Ian Wilson

Posts: 757
Joined: Sat Aug 03, 2002 6:58 am
Location: Citrus Heights, CA

Ian

Ian Wilson, P.L.S. (CA / NV / CO)
916.517.2879 cell

ian.wilson.pls@gmail.com

by **Gary O** » Thu Feb 07, 2008 10:57 am

Ian (My youngest son is also an Ian),

The fact that the municipality does not determine the underlying ownership after a vacation is exactly what I was saying and I agree that it doesn't always go to the center. If a subdivision has a public road running along a boundary but completely on the parcel and then another subdivision creates lots along the opposite side of that road, if vacated the entire right of way would revert back to the original subdivision lots, not down the center. (hope I explained that clearly.) The fee line will always be in the same place after a vacation of right of way as it was before the dedication, except where its granted in fee.

Nor does it always go to adjoiners. We have old maps upon which, for some reason, the subdivider retained ownership of the right of way and it later became public through maintenance. If this was vacated the underlying fee ownership is still with the subdivider although the adjoiners could quiet title.

Your re-dedication of the roads on subsequent maps probably isn't necessary per 66499.20 1/2, but not everyone is familiar with that section so it would save some future problems by re-dedicating.

Gary O'Connor, L.S. 7272

County Surveyor, Sonoma



Gary O

Posts: 97
Joined: Mon Mar 31, 2003 4:28 pm
Location: Sonoma County, God's country

Depicting reversion rights on subdivision maps

by **mpallamary** » Sun Mar 16, 2008 4:59 pm

POST 1 OF 2

The position currently being promulgated by the City of San Diego Mapping Department regarding including the inclusion of so called "reversionary rights" when preparing a subdivision map is fatally flawed and is a roadmap to litigation for the private sector Land Surveyor. The entire notion fails as this position neglects to consider what constitutes a "subdivision" in California. It is not a well thought out proposition.

As articulated in the City of San Diego's recently revised mapping manual, "SMA 66434(e) requires that a subdivision map include within its distinctive exterior border all property that the subdivider intends to subdivide, which typically includes reversion rights within adjoining public streets because. A reversion right is the assumed right of the owner of a parcel to a portion of the underlying fee interest within an adjoining public street. "

Setting aside the notion that the City actually knows what the subdivider intends to do, let us focus on what constitutes a subdivision map. The definition of a California "subdivision" is found in Section 66424 of the SMA which provides the following:

66424. "Subdivision" means the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way. "Subdivision" includes a condominium project, as defined in subdivision (f) of Section 1351 of the Civil Code, a community apartment project, as defined in subdivision (d) of Section 1351 of the Civil Code, or the conversion of five or more existing dwelling units to a stock cooperative, as defined in subdivision (m) of Section 1351 of the Civil Code.

It is of particular importance to note that in order for a parcel of land to be eligible and considered for subdivision, it needs to be "shown on the latest equalized county assessment roll as a unit or as contiguous units....." The provisions related to the county assessment roll are contained within Sections 601-623 of the states Revenue and Taxation Code where the following is found.

601. The assessor shall prepare an assessment roll, as directed by the board, in which shall be listed all property within the county which it is the assessor's duty to assess.



mpallamary

Posts: 1256
Joined: Tue Mar 11, 2008 2:12 pm

â€œ602. This local roll shall show:

- (a) The name and address, if known, of the assessee. The assessor is not required to maintain electronic mail addresses.
- (b) Land, by legal description.
- (c) A description of possessory interests sufficient to identify them.
- (d) Personal property. A failure to enumerate personal property in detail does not invalidate the assessment.
- (e) The assessed value of real estate, except improvements.
- (f) The assessed value of improvements on the real estate.
- (g) The assessed value of improvements assessed to any person other than the owner of the land.
- (h) The assessed value of possessory interests.
- (i) The assessed value of personal property, other than intangibles.
- (j) The revenue district in which each piece of property assessed is situated.
- (k) The total taxable value of all property assessed, exclusive of intangibles.
- (l) Any other things required by the board.

Please note that the real property the City of San Diego is attempting to define as being eligible for subdivision is NOT shown on the latest equalized assessment roll. In other words, by legal definition, the areas that the City of San Diego insists be shown on the Reversionary Subdivision Map (RSM) are in conflict with the SMA and the revenue and taxation code.

Put another way, the ONLY lands eligible for subdivision are those lands shown on the latest county assessment rolls. The County Assessor does not include the streets under the assessment roll and you cannot include streets in a subdivision map unless they have been vacated and they have been assigned a parcel number. Normal streets are not segregated and as such, they are not eligible for subdivision. Therefore, under the SMA, in order for you to determine if the land you are subdividing can be subdivided, you need to first consult with the County Assessor. That is the first and most fundamental test and this is the one that causes the City of San Diegoâ€™s position to implode.

The United States Supreme Court weighed in on this issue in 1886 when the whole notion of assessment rolls was debated. See SANTA CLARA COUNTY v. SOUTHERN PAC. R. CO., 118 U.S. 394 (1886).

In addition, in 1951, the Second District Court weighed in on the notion that the assessor could place streets on the assessment rolls in an important ruling in Gaspard v. Edwin M. LeBaron, Inc., 107 Cal.App.2d 356 when it declared:

â€œThe underlying and fatal weakness in plaintiffs' claim of title is that the roadway was not subject to assessment for taxes. No authority exists for the assessment and levy of taxes on a public road, or, to state the matter differently, any attempted assessment, levy and sale of land impressed with an easement for use as a public road is entirely void and ineffective to destroy or alter the public right. (San Leandro v. Le Breton, 72 Cal. 170, 177 [13 P. 405]; Lantz v. City of Los Angeles, 185 Cal. 262, 270 [196 P. 481]; Burk v. City of Santa Cruz, 163 Cal. 807 [127 P. 154]; Cal. Const., art. XIII, Â§ 1.) [3] Taxation proceedings initiated without authority to tax cannot be validated by subsequent legislation. (People v. Goldtree, 44 Cal. 323; Miller v. McKenna, 23 Cal.2d 774 [147 P.2d 531], and cases cited, p. 782.) [4] Plaintiffs' deed was void and of no effect whatever to validate the unauthorized levy and sale of rights in a public road.â€

As most qualified land surveyors know, the standard unit of assessor segregation is what is known as an Assessor's Parcel. These are usually defined by a book, page/block and parcel number, i.e. APN 350-220-022 meaning the parcel is defined and assessed as Parcel found in book 350, page or block 220, parcel 022. This is the parcel defined by the revenue and taxation code. What this also means is in order for a parcel to be subdivided, it has to have a parcel number. Streets do not have parcel numbers and under the law they cannot have a parcel number. Lots and deeded property do. To restate, the ONLY property you can subdivide and the limits of the land you can subdivide have to be first shown on an assessor's plat. The only way you can include a street in a subdivision map is when it has been vacated for then it would have a parcel number. Until such time as a street is vacated, it will not be assigned a parcel number. You cannot include a street in the boundary of a subdivision. It is against the law.

SECOND HALF TO FOLLOW

Depicting reversion rights on subdivision maps

by mpallamary » Sun Mar 16, 2008 5:00 pm





mpallamary

Posts: 1256

Joined: Tue Mar 11, 2008 2:12 pm

As an added point to consider, with regards to the erroneous notion that the streets are somehow to be included within a RSM, the legislature wisely and long ago considered the implications of that situation when it included its understanding in the SMA, to wit: "Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way." When you have a property divided by a street, clearly the legislature recognized the function and rights that flow from properties that front a road or a street. If you accept the city's ill founded position, the notion of contiguity would not exist as you could not have contiguity in this situation as the boundary would not have to be distinguished. Indeed, if the legislature had intended for reversion or severance to be an issue in mapping, it would not have included this important language.

Absent a definition in the SMA, the Streets and Highway Code provides the following definition:

8308. "Street" and "highway" include all or part of, or any right in, a state highway or other public highway, road, street, avenue, alley, lane, driveway, place, court, trail, or other public right-of-way or easement, or purported public street or highway, and rights connected therewith, including, but not limited to, restrictions of access or abutters' rights, sloping easements, or other incidents to a street or highway.

What this means in the legislature expressly segregated streets from the subdivision map. If the legislature had intended for the streets to be included it would not have defined a subdivision as not only being segregated distinct and apart from the land being subdivided, it would not have prescribed that the only land eligible for subdivision must be shown on the "latest equalized county assessment roll."

You cannot include a street in a subdivision boundary as has been suggested by the City of San Diego. You cannot prepare and file a RSM. There is no authority for it and it is not provided for under the law.

For anyone troubled by the city's position, I would remind you that their review of YOUR map is rigidly and specifically limited to the following:

§66442. (a) If a subdivision for which a final map is required lies within an unincorporated area, a certificate or statement by the county surveyor is required. If a subdivision lies within a city, a certificate or statement by the city engineer or city surveyor is required. The appropriate official shall sign, date, and, below or immediately adjacent to the signature, indicate his or her registration or license number with expiration date and the stamp of his or her seal, state that:

- (1) He or she has examined the map.
- (2) The subdivision as shown is substantially the same as it appeared on the tentative map, and any approved alterations thereof.
- (3) All provisions of this chapter and of any local ordinances applicable at the time of approval of the tentative map have been complied with.
- (4) He or she is satisfied that the map is technically correct.

(b) City or county engineers registered as civil engineers after January 1, 1982, shall only be qualified to certify the statements of paragraphs (1), (2), and (3) of subdivision (a). The statement specified in paragraph (4) shall only be certified by a person authorized to practice land surveying pursuant to the Professional Land Surveyors' Act (Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code) or a person registered as a civil engineer prior to January 1, 1982, pursuant to the Professional Engineers' Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code). The county surveyor, the city surveyor, or the city engineer, as the case may be, or other public official or employee qualified and authorized to perform the functions of one of those officials, shall complete and file with his or her legislative body his or her certificate or statement, as required by this section, within 20 days from the time the final map is submitted to him or her by the subdivider for approval.

(c) As used in this section, "certificate," "certify," and "certified" shall have the same meaning as provided in Sections 6735.5 and 8770.6 of the Business and Professions Code.

What this means is under the SMA, the city's review is limited to assuring that the map is technically correct. This means that one of the fundamental tasks if not the most important task for the city engineer/surveyor to do is to

assure that the land is eligible for subdivision. This means the city has to examine the "latest equalized county assessment roll." I note also that the SMA provides the following:

â€œ66442.5. The following statements shall appear on a final map:

(a) Engineer's (surveyor's) statement:

This map was prepared by me or under my direction and is based upon a field survey in conformance with the requirements of the Subdivision Map Act and local ordinance at the request of (name of person authorizing map) on (date). I hereby state that all the monuments are of the character and occupy the positions indicated or that they will be set in those positions before (date), and that the monuments are, or will be, sufficient to enable the survey to be retraced, and that this final map substantially conforms to the conditionally approved tentative map.

The law is very clear as to who is preparing the map and it is not the city. What this also means is that you are stating that your map conforms to the SMA. This means that you have examined the latest equalized county assessment roll to determine that that land you are working with is in fact eligible for subdivision. You can't just subdivide anything and you cannot subdivide streets if they are not assessed just as you cannot subdivide parks and beaches and other public places. You have to review the assessor roll and it is the city's duty to review the roll to see that all is in harmony. It is a step the city has not considered and consequently, their ill advised opinion and inappropriate conclusion is flawed.

Given the plain language reading of the SMA and the revenue and taxation code along with the rulings of the Supreme Court of the United States combined with multiple declaration of case law across the state, I would suggest that the entire discussion regarding reversionary rights found on pages 17 and 18 of the city's new manual be removed in their entirety. Without embarking on an extensive discourse, the payment of property taxes is in essence a contract with the government. When you pay taxes, you, as a property owner, are entitled to certain things. In general, you can subdivide your property and you can build a house. In return, you are assessed and you pay taxes. It is all pretty neat and simple and until the City began advancing this absurd position, well understood.

Last but not least, as a surveyor in responsible charge of preparing subdivision maps, you have a duty to follow the law.

Michael Pallamary, PLS

Request for cases to consider

by mpallamary » Mon Mar 17, 2008 3:50 pm

Hello,

I have commenced work on a new book tentatively entitled: THE RULES OF REVERSION, DEDICATION, AND ABANDONMENT OF RIGHTS OF WAY AND EASEMENTS IN THE STATE OF CALIFORNIA.

I have researched essentially every important every case in California law and other courts that deals with this issue. I am also compiling copies of maps and other documents referred to in each of these case. I think this will be a very informative treatise.

Given this dialogue, I am requesting examples or cases anyone else is familiar with that might shed a light on this interesting subject. If you are interested in sharing some information with me, please feel free to contact me. I am also interested in obtaining other examples wherein the determination of reversion areas has been difficult or subject to multiple interpretations.

Thank you for indulging me. I look forward to sharing my findings and this volume of case law with my peers.



mpallamary

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